

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Oct 27, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SHERIL W.,¹

Plaintiff,

v.

KILOLO KIJAKAZI, Acting
Commissioner of Social Security,

Defendant.

No. 1:22-cv-3016-EFS

**ORDER RULING ON CROSS
SUMMARY-JUDGMENT MOTIONS
AND REMANDING THE MATTER
FOR PAYMENT OF BENEFITS**

Plaintiff Sherril W. appeals the denial of benefits by the Administrative Law Judge (ALJ). The parties agree the ALJ erred when analyzing the medical opinions, but the parties disagree about the appropriate remedy. After reviewing the record and relevant authority, the Court remands the case for payment of benefits from the alleged onset date of December 7, 2009.

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¹ To address privacy concerns, the Court refers to Plaintiff by first name and last initial or as "Plaintiff." See LCivR 5.2(c).

I. Background

Plaintiff alleges disability due to back pain, left leg pain and numbness, anxiety, depression, and medication side-effects, including headaches, dizziness, and nausea. Her back pain began after a work injury at Fred Meyers in 2005. After back surgery in 2006, she returned to work for about three years until she had a sudden onset of severe back pain in December 2009.² Due to her persistent back pain, Plaintiff reports that she must rotate between sitting, standing, and lying down throughout the day, she has to lay down several times a day and some days where she largely lies down, she has fallen when her left leg has given out, and she suffers from anxiety and depression due to concern about falling and not being able to work or interact with her family as she previously did.

Due to her pain and reduced functioning, Plaintiff protectively filed for disability insurance benefits in 2011, alleging an onset date of December 7, 2009.³ At the date of last insured in 2009, Plaintiff was 50 years old.⁴ Plaintiff's disability application has been denied three times by ALJs.⁵ The first two disability denials were authored by ALJ Virginia Robinson; those decisions were subsequently

² AR 42, 64, 220, 430, 496.

³ AR 167–70.

⁴ During the pendency of this matter, Plaintiff's age category changed: first to “closely approaching advanced age” and now to “advanced age.”

⁵ AR 16–72, 109–21, 951–53, 988–1013, 1029–1117.

1 determined to contain error, and the matter was remanded for additional
2 administrative proceedings.⁶

3 After the second remand, the matter was assigned to ALJ Howard Prinsloo,
4 who again denied disability. ALJ Prinsloo found:

- 5 • Step one: Plaintiff had not engaged in substantial gainful activity
6 since the alleged onset date of December 7, 2009, through the date
7 last insured of September 30, 2015.
- 8 • Step two: Plaintiff had the following medically determinable severe
9 impairments: degenerative disc disease (status post history of
10 laminectomy), affective disorder, and anxiety disorder.
- 11 • Step three: Plaintiff did not have an impairment or combination of
12 impairments that met or medically equaled the severity of one of the
13 listed impairments.
- 14 • RFC: Plaintiff had the RFC to perform light work except she was
15 further limited to:
16 occasional stooping, kneeling, crouching, crawling, and
17 climbing ladders, ropes, or scaffolds; should avoid
18 concentrated exposure to excessive vibration and workplace
19 hazards, including dangerous machinery or unprotected
heights; [and] . . . simple and well-learned tasks with
superficial interaction with the public and coworkers (no
extensive teamwork).
- 20 • Step four: Plaintiff was unable to perform any past relevant work.

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22 ⁶ AR 536–56, 954–81.

- Step five: considering Plaintiff's RFC, age, education, and work history, Plaintiff could perform work that existed in significant numbers in the national economy, such as merchandise marker, production assembler, and housekeeping/cleaner.⁷

Plaintiff now appeals ALJ Prinsloo's denial of disability and asks for an immediate award of benefits.⁸ The Commissioner concedes the ALJ erred when analyzing the medical opinions, but the Commissioner asks the Court to remand the matter for further administrative proceedings because there are evidentiary conflicts that must be resolved by the ALJ.⁹

II. Analysis

A. Remand Standard

When a harmful error occurs in the administrative proceeding, remand for further administrative proceedings is the usual course absent rare circumstances.¹⁰ Three factors must be satisfied for the court to consider remand for payment of benefits:

- (1) the record has been fully developed and further administrative proceedings would serve no useful purpose;
- (2) the ALJ has failed to

⁷ AR 905–31.

⁸ ECF Nos. 1, 9.

⁹ ECF No. 13.

¹⁰ *Treichler v. Comm'r of Social Sec. Admin.*, 775 F.3d 1090, 1099 (9th Cir. 2014) (quoting *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985)).

1 provide legally sufficient reasons for rejecting evidence, whether
 2 claimant testimony or medical opinion; and (3) if the improperly
 3 discredited evidence were credited as true, the ALJ would be required
 4 to find the claimant disabled on remand.¹¹

5 When these factors are satisfied, the decision whether to remand for benefits or
 6 further proceedings is within the court's discretion, as it "is a fact-bound
 7 determination that arises in an infinite variety of contexts."¹²

8 **B. Remand Analysis**

9 The parties agree the second factor is satisfied: the ALJ failed—yet again—
 10 to provide legally sufficient reasons for rejecting several medical opinions.

11 As to the third factor, if the rejected medical opinions are credited as true,
 12 Plaintiff is deemed disabled. Dr. John Lyzanchuk, who has treated and managed
 13 Plaintiff's back pain, left leg pain and numbness, and resulting medication side-
 14 effects for more than a decade, authored medical opinions in 2014, 2017, and 2019.
 15 Dr. Lyzanchuk opined that Plaintiff would need to lie down 4–5 times during the
 16 workday, need to rotate between standing and sitting every 20–30 minutes, and
 17 miss more than 4 days of work per month due to her back and leg pain. In addition,
 18 Dr. Rox Burkett agreed that Plaintiff was unable to sustain work due to excessive
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20 ¹¹ *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014).

21 ¹² *Treichler*, 775 F.3d at 1100 (quoting *Harman v. Apfel*, 211 F.3d 1172, 1177 (9th
 22 Cir. 2000)).
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1 absences and her need to rest or lay down.¹³ And examining physician Dr. Jesse
2 McClelland opined that Plaintiff would struggle with attendance due to her pain
3 and medication side-effects.¹⁴ The vocational expert testified that that, when
4 considering the opined limitations related to Plaintiff's absenteeism and need to lie
5 down, she would be unable to perform gainful work.¹⁵ Therefore, the third factor is
6 satisfied.

7 As to the remaining first factor, the focus is whether the record has been
8 fully developed and that no further administrative proceedings will serve a useful
9 purpose.¹⁶ As to developing the record, the Commissioner does not identify what
10 additional evidence must be developed. The period at issue is from the alleged
11 onset date of December 7, 2009, through the date last insured of September 30,
12 2015. This period began more than a decade ago and ended almost 7 years ago.
13 No additional record development is needed for this period, as the record is
14 expansive. For instance, the record contains Plaintiff's monthly treatment notes
15 from Dr. Lyzanchuk that indicate very limited back use and other limitations,
16 other treatment notes pertaining to spinal injections, imaging reports,

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18 ¹³ AR 857–58.

19 ¹⁴ AR 325–30 (“She may struggle to maintain regular attendance at the workplace
20 as she is barely able to leave the house and she is no longer able to drive.”).

21 ¹⁵ AR 500–01.

22 ¹⁶ *Garrison*, 759 F.3d at 1020.

1 consultative-examination reports, and reviewing opinions during that time frame
2 and after.¹⁷ Further, if the improperly discounted medical opinions by treating
3 providers Dr. Lyzanchuk and ARNP Cari Cowin, examining physician Dr.
4 McClelland, and reviewing physician Dr. Burkett, are credited as true, it is clear
5 based on the vocational expert's testimony that Plaintiff is unable to sustain
6 competitive work.

7 Although no record development is needed, the Commissioner submits there
8 are evidentiary conflicts that require resolution by the ALJ on remand.
9 "Administrative proceedings are generally useful where . . . there is a need to
10 resolve conflicts and ambiguities."¹⁸ The Commissioner argues that the following
11 evidence conflicts with Plaintiff's claim of disability:

- 12 • Plaintiff reported that her back pain in 2010 had gotten progressively
13 worse over the past couple of years, but she did not report back pain
14 at her doctor visits until December 2009.
- 15 • The MRI findings were described as unremarkable and not
16 significant, and the x-ray findings were mild.

20 ¹⁷ See, e.g., AR 280–86, 325–30, 343–45, 786, 790, 796, 808, 811, 812, 854–58, 861,
21 869, 870, 874.

22 ¹⁸ *Treichler*, 775 F.3d at 1101.

- 1 • An examining panel found Plaintiff's subjective complaints
- 2 outweighed the objective findings on the imaging and did not indicate
- 3 that further treatment was needed.
- 4 • Reviewing medical opinions found Plaintiff capable of light work with
- 5 certain additional limitations.
- 6 • A physical examination in January 2010 found Plaintiff relatively
- 7 healthy with full lower-leg strength, a negative straight-leg raise, and
- 8 good gait.
- 9 • Plaintiff did not seek care from a specialist for her back pain.
- 10 • There was little evidence that Plaintiff had symptoms of or treatment
- 11 for depression and serious anxiety.
- 12 • The mental-status examination findings were generally benign with
- 13 normal concentration, persistence, pace, intellectual functioning, and
- 14 thought process.¹⁹

15 The Court addresses each of these purported conflicts.

16 1. Back-pain reports

17 The first purported conflict highlighted by the Commissioner takes
18 Plaintiff's comments about her back pain during medical appointments out of
19 context and fails to appreciate that, although Plaintiff's back pain initially
20 subsided after her spinal surgery in 2006, she continued to have episodic back pain

22 ¹⁹ ECF No. 13.

1 and that after an incident on December 7, 2009, her back pain escalated and
2 persisted.²⁰ After the disability onset date, Plaintiff consistently reported back pain
3 and pain that extends to her left leg with occasional left-leg numbness. There are
4 no evidentiary conflicts as to Plaintiff's back-pain reports that require resolution by
5 the ALJ.

6 2. Imaging results

7 Next, contrary to the Commissioner's general statement that the MRI
8 findings were described as unremarkable and the x-ray findings as mild, both the
9 MRI and the x-ray in 2009 reveal impairments that contribute to Plaintiff's back
10 pain. The MRI in December 2009 revealed mild degeneration and anterior bulging
11 of the disc at T11-12, mild reactive changes involving L5 and S1 adjacent to the
12 disc space, laminectomy defect on the left at L5-S1, moderate degeneration and
13 small central and left paracentral protrusion of the L5-S1 disc with a small signal
14 in the posterior annulus without significant stenosis or nerve root compression,
15 and some mild facet arthrosis at L5-S1.²¹ The lumbar x-ray performed within the
16 same week revealed narrowing of the L5-S1 disc space, compatible with
17 degenerative disc disease, and mild degenerative facet arthrosis of the lumbar
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19 ²⁰ AR 301, 297.

20 ²¹ AR 343. *See also* AR 455 (Dr. Rubin testifying that, following Plaintiff's 2006
21 hemilaminectomy, the 2009 and 2011 MRIs revealed laminar defect in L5/S1 on
22 the left and a small central and left paracentral disc protrusion.).
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1 spine and facet joints.²² Thus, although there were mild and unremarkable
2 findings, the imaging also revealed moderate degeneration and protrusion on the
3 L5-S1 disc. There is objective medical evidence of conditions that contribute to
4 Plaintiff's back and left-leg pain.²³ The imaging is not a source of conflict that
5 requires resolution on remand by the ALJ.

6 3. Examining panel findings

7 The Commissioner highlights that the two physicians, William Stump, M.D.,
8 and Chester McLaughlin, M.D., who conducted the independent medical
9 examination (IME) for Washington Department of Labor and Industries' (L&I)
10 purposes in August 2010 determined that Plaintiff's reported pain was not
11 supported by the imaging. However, this IME must be read in the context it was
12 issued, which was to determine if Plaintiff's increased back pain in 2009 was
13 related to her 2005 work-place injury.²⁴ The IME was not concerned about injuries
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15 ²² AR 345.

16 ²³ See *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (recognizing that an
17 ALJ cannot discount a claimant's symptom reports solely because they are not fully
18 corroborated by the objective medical evidence).

19 ²⁴ AR 316–17 (specifying that the purpose of the IME was only to address the
20 specific work injury, which was identified as a herniated disc at L5-S1 impinging
21 on the left S1 nerve root and for which surgery was performed in 2006, and to
22 determine if the condition had worsened).
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1 or conditions unrelated to her 2005 work-place injury. Thus, the IME and its
2 statement that Plaintiff's pain was not medically supported must be considered in
3 this limited context. Moreover, not only did the imaging reveal back impairments,
4 but these physicians observed functional limitations, including camptocormia
5 posture, palpated tension in the lumbar, severe tenderness in the low back, painful
6 lumbar rotation and motion, severe back pain when laying supine and attempting
7 to put her knee to her chest, back pain during the Patrick's maneuver, and severe
8 back pain during supine straight leg raising with the left lower extremity.²⁵ These
9 observations are consistent with, rather than contrary to, Plaintiff's symptom
10 reports.

11 The IME's internal inconsistency—that it noted observed limitations, pain,
12 and tenderness but found that the reported pain was not supported by the imaging
13 related to her 2005 work-place injury—was remarked on by several medical
14 providers. Treating ARNP Cari Cowin expressed her surprise that the IME
15 reported Plaintiff's symptoms as subjective given the observed decreased sensation
16 to the left lateral thigh and calf and a positive straight leg raise on the right at 30
17 degrees.²⁶ Similarly, the medical expert at the 2019 administrative hearing,
18 Dr. Leonard Rubin testified that, absent the IME's contradictory statement about
19 no basis for Plaintiff's subjective increased pain complaints, he would opine that

21 ²⁵ AR 322.

22 ²⁶ AR 304.

1 Plaintiff met listing 1.04(a) for a time period.²⁷ Also, Dr. Burkett found that the
2 medical records supported Plaintiff's reported pain and lower leg problems and
3 highlighted that leg pain can be from sensory nerves rather than motor nerves.²⁸
4 Therefore, on this record, which contains disabling opinions from several medical
5 sources that must be credited as true given the ALJ's analytical errors,²⁹ the
6 internally contradictory IME does not create a conflict requiring further
7 administrative proceedings.

8 4. Reviewing "light work" medical opinions

9 The Commissioner also highlights that the reviewing medical opinions
10 completed by Guillermo Rubio, M.D., and Robert Hoskins, M.D. found Plaintiff
11 capable of light work with certain additional limitations and therefore these light-
12 work opinions conflict with the disabling opinions.³⁰ However, Dr. Rubio and
13 Dr. Hoskins relied heavily on the aforementioned IME conducted by Dr. Stump and
14 Dr. McLaughlin in August 2010, and another IME for L&I purposes conducted by
15 Paul Reiss, M.D. in January 2011. For instance, Dr. Rubio and Dr. Hoskins noted
16 that the most informative factors in assessing the credibility of Plaintiff's
17 statements were the "marked non-physiological observations & no orthopedic,

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19 ²⁷ AR 462.

20 ²⁸ AR 854–56.

21 ²⁹ See AR 300, 303, 393–95, 847–49, 896.

22 ³⁰ ECF No. 13 (relying on AR 74–89, 92-101).
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1 neurologic or imaging explanation for subjective complaints noted” at the two IMEs
2 and that the “EMG concluded there is no evidence for [left lower extremity]
3 radiculopathy.”³¹ Yet, as discussed above, imaging revealed several back
4 conditions, and tenderness and reduced range of motion was observed not only
5 during the 2010 IME but during Plaintiff’s appointments with Dr. Lyzanchuk and
6 ARNP Cowin. Moreover, during the 2011 IME, Dr. Reiss described Plaintiff as a
7 deconditioned female, who was uncomfortable at various times throughout the
8 examination.³² Dr. Reiss noted several abnormal findings, including straight leg
9 raise mildly positive on the left at 30 degrees in the supine position, that Plaintiff
10 rose from the chair with some difficulty, and that she walked with a somewhat
11 stooped posture.³³ And, as Dr. Rubin testified to, a negative EMG did not
12 necessarily correlate to a finding that Plaintiff did not suffer from radiculopathy, as
13 Plaintiff’s leg pain could be caused by the herniated disc irritating the nerve going
14 down her left leg.³⁴

15 Therefore, the record suggests that Dr. Rubio and Dr. Hoskins were either
16 not aware of or did not account for the context and limitations of the IMEs
17 conducted by Dr. Stump, Dr. McLaughlin, and Dr. Reiss. Because Plaintiff
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19 ³¹ AR 82, 98–99.

20 ³² AR 309.

21 ³³ AR 310.

22 ³⁴ AR 468–70.

1 presented objective medical evidence showing the existence of medical impairments
2 that can reasonably be expected to produce her alleged pain and other symptoms,
3 Dr. Rubio's and Dr. Hoskin's light-work opinions do not create a conflict
4 necessitating further administrative proceedings, considering the medical opinions
5 that are to be credited as true.³⁵

6 5. January 2020 physical examination

7 The January 2010 physical examination also does not create a conflict
8 necessitating administrative proceedings. As noted by the Commissioner, the
9 examination note contains some normal findings,³⁶ however, the examiner also
10 observed:

11 Palpation elicits a fairly significant discomfort and pain on the left
12 over the L4-5 and the L5-S1 facet joints. L5-S1 is more tender than
13 L4-5. With hyperextension and lateral rotation, this does exacerbate
14 the patient's pain on the left. . . . On the left with straight leg raising
15 at 50 degrees, she reports some pulling sensation in her left hip, but it
16 is not really in a radicular pattern.³⁷

17 ³⁵ See *Moisa v. Barnhart*, 367 F.3d 882, 887 (9th Cir. 2004).

18 ³⁶ That Plaintiff appeared "relatively healthy" at the January 2010 examination
19 does not conflict with her claim of disability onset the month prior, as the
20 Commissioner fails to explain why deconditioning would occur within one month of
21 the alleged disability date. AR 297. And in fact, one year later at the January 2011
22 IME with Dr. Reiss, Dr. Reiss noted that Plaintiff was deconditioned. AR 309.

23 ³⁷ AR 297–98.

1 The normal findings highlighted by the Commissioner do not create a conflict
2 necessitating administrative proceeding given the abnormal findings during the
3 same examination, which were consistent with Plaintiff's reported symptoms.
4 Moreover, the provider recommended that Plaintiff receive spinal injections and
5 physical therapy.³⁸ Plaintiff abided by this treatment plan, but treatment did not
6 provide lasting relief.³⁹

7 6. Specialist re: back pain

8 The Commissioner highlights that Plaintiff did not seek care from a
9 specialist for her back pain. However, the record reflects that in addition to her
10 monthly appointments with Dr. Lyzanchuk, Plaintiff received the recommended
11 injections and physical therapy, both of which did not provide lasting relief.⁴⁰ A
12 second spinal surgery was recommended, but Plaintiff at that point did not have
13 medical insurance or the financial means to pay for the second spinal surgery.⁴¹
14 Therefore, Plaintiff had good cause for not following through with the
15 recommendation to have a second spinal surgery.⁴²

17 ³⁸ AR 298.

18 ³⁹ AR 280–86.

19 ⁴⁰ AR 280–86.

20 ⁴¹ AR 43–44, 452, 481, 1044.

21 ⁴² See *Fair v. Bowen*, 885 F.2d 597, 603-04 (9th Cir. 1989); Social Security Rlg. 18-
22 3p: Titles II and XVI: Evaluation of Symptoms in Disability Claims.

1 7. Treatment for depression and anxiety

2 Similarly, the Commissioner's argument that there was little evidence that
3 Plaintiff had symptoms of or treatment for depression and serious anxiety is
4 undermined by the fact that Plaintiff did not have health insurance or the financial
5 means to pay for mental-health treatment to assist with depression and anxiety.⁴³
6 Moreover, Plaintiff's depression and anxiety were rooted in her physical pain,
7 concern about falling, and that she was no longer able to financially contribute to
8 the household, help with household tasks, and engage in physical activities with
9 her family.⁴⁴ On this record, Plaintiff's sparse mental-health treatment does not
10 create a need for further administrative proceedings.

11 8. Mental-status examinations

12 The Commissioner also highlights that the mental-status examination
13 findings were generally benign. Again, the Commissioner fails to appreciate that
14 Plaintiff's depression and anxiety were rooted in her physical limitations and pain,
15 not cognitive or other psychological limitations. For example, during the
16 psychological examination in October 2011, Dr. McClelland noted that Plaintiff

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18 ⁴³ AR 507.

19 ⁴⁴ See *Ghanim v. Colvin*, 763 F.3d 1154, 1164 (9th Cir. 2014) (finding the ALJ erred
20 by rejecting the claimant's symptoms resulting from anxiety, depressive disorder,
21 and PTSD on the basis that the claimant performed cognitively well during
22 examination and had a generally pleasant demeanor).
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1 was in obvious pain, shifting from seated to standing positions.⁴⁵ Dr. McClelland
2 opined that “[t]he presence of severe chronic pain significantly limits treatment
3 options and will make it virtually impossible for her depression to go into remission
4 unless her pain is also treated to remission.”⁴⁶ There is no dispute that Plaintiff’s
5 depression and anxiety were rooted in her back and leg pain and resulting
6 limitations and, therefore, the normal findings during mental-status examinations
7 do not necessitate further administrative proceedings.

8 9. Conclusion

9 In summary, the purported conflicts highlighted by the Commissioner do not
10 serve as a basis for additional administrative proceedings. The ALJ failed to
11 provide legally sufficient reasons for rejecting the medical opinions. When such
12 opinions are credited as true, Plaintiff has been unable to sustain competitive
13 work.⁴⁷ There are no outstanding issues to be resolved.⁴⁸

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15 ⁴⁵ AR 325.

16 ⁴⁶ AR 329. Largely based on Dr. McClelland’s examination, Dr. Miller Garrison
17 opined at the 2019 hearing that Plaintiff met a listing for a 1–2-month window
18 based on her anxiety, depression, and attendance difficulties. AR 446–51.

19 ⁴⁷ See *Moisa*, 367 F.3d at 887 (awarding benefits).

20 ⁴⁸ See *Benecke v. Barnhart*, 379 F.3d 587, 595–96 (9th Cir. 2004) (recognizing that
21 additional proceedings are not necessary if the credited evidence establishes that
22 the claimant is unable to maintain employment due to pain and other symptoms).

III. Conclusion

Remand for an award of benefits is appropriate. The Commissioner had three opportunities to consider the record, and two opportunities to remedy the analytical errors identified by the court. There is no useful purpose in remanding for furthering proceedings.⁴⁹ The credited medical opinions and remaining medical and vocational record establish disability as of the alleged onset date.

Accordingly, **IT IS HEREBY ORDERED:**

1. Plaintiff's Motion for Summary Judgment, **ECF No. 9**, is **GRANTED**.
2. The Commissioner's Motion for Summary Judgment, **ECF No. 13**, is **DENIED**.
3. The Clerk's Office shall enter **JUDGMENT** in favor of Plaintiff **REVERSING** and **REMANDING** the matter to the Commissioner of Social Security for immediate calculation and award of benefits from the alleged disability onset date.
4. The case shall be **CLOSED**.

IT IS SO ORDERED. The Clerk's Office is directed to file this order and provide copies to all counsel.

DATED this 27th day of October 2022.



EDWARD F. SHEA
Senior United States District Judge

⁴⁹ See *Vasquez v. Astrue*, 572 F.3d 586, 593–94 (9th Cir. 2009).